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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of April 1, 1972

between

NORTH AMERICAN CAR CORPORATION

and

FIRST SECURITY STATE BANK, as Trustee

LEASE OF RAILROAD EQUIPMENT dated as of April 1, 1972, between NORTH AMERICAN CAR CORPORATION, a Delaware corporation (hereinafter called the Lessee), and FIRST SECURITY STATE BANK, a Utah corporation (hereinafter called the Lessor), as Trustee under a trust agreement dated as of April 1, 1972, with FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, and FIRST SECURITY BANK OF IDAHO, NATIONAL ASSOCIATION, as beneficiaries (hereinafter called the Beneficiaries).

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of April 1, 1972 (hereinafter called the Security Documents), with PULLMAN INCORPORATED (Pullman-Standard Division) (hereinafter called the Builder), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Builder has assigned or will assign its interests in the Security Documents to FIRST WESTERN BANK AND TRUST COMPANY, as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number (hereinafter called the Units) as are delivered and accepted and settled for under the Security Documents on or prior to September 1, 1972 (hereinafter called the Cut-Off Date), at the rentals and for the terms and upon the conditions hereinafter provided;

Now, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Security Documents, subject to all the rights and remedies of the Vendor under the Security Documents:

§ 1. *Incorporation of Model Provisions.* Whenever this Lease incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Lease Provisions" annexed to the Security Documents as Part II of Annex C thereto (hereinafter called the Model Lease Provisions), such provision of the Model Lease Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this Lease.

§ 2. *Delivery and Acceptance of Units.* § 2 of the Model Lease Provisions is herein incorporated as § 2 hereof.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 41 consecutive semiannual payments payable on March 1 and September 1 of each year commencing September 1, 1972. The first such semiannual payment shall be in an amount equal to .023611% of the Purchase Price (as defined in the Security Documents) of each Unit settled for under the Security Documents for each day elapsed from and including the date such Unit is settled for under the Security Documents to September 1, 1972 (less an amount equal to the difference

between (y) interest at the rate of $8\frac{1}{2}\%$ per annum during the period to July 19, 1972 on the Conditional Sale Indebtedness (as defined in the Security Documents, and (z) interest actually accrued on the Conditional Sale Indebtedness to July 19, 1972 thereon pursuant to Article 4 of the Security Documents for that period) and thereafter 40 consecutive semiannual payments payable on March 1 and September 1 in each year commencing with March 1, 1973 each in an amount equal to 3.72624% of the Purchase Price of each Unit subject to this Lease on each such date; *provided, however*, that any and all sums paid by the Lessee pursuant to its guaranty obligations set forth in Article 8 of the Security Documents not attributable to an Event of Default hereunder shall be thereupon deemed to have been paid in reduction or satisfaction, to the extent thereof, of any rental payments then or thereafter due or payable by the Lessee to the Lessor under this Lease.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease in Federal funds (including but not limited to the payments required under § 7 hereof) for the account of the Lessor, c/o First Western Bank and Trust Company, 235 Montgomery Street, San Francisco, California 94104, attention of Trust Department, on or before the date upon which such payments are due and owing and the Lessee agrees so to do. On or before the date upon which payments to the Vendor under the Security Documents are due and owing, First Western Bank and Trust Company, is hereby irrevocably instructed to apply funds received hereunder to make such payment to the Vendor (or to any assignee of the Vendor pursuant to Section 7 of the Agreement and Assignment between the Builder and the Vendor, dated as of April 1, 1972, under which the Security Documents

are being assigned to the Vendor). Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Security Documents payable at the time such payments are due hereunder (or within six days thereafter) and, so long as no default under the Security Documents shall have occurred and be continuing, any balance shall be paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documents, including the Lessee's rights by subrogation under Article 8 thereof, or the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same

shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Security Documents in its capacity as Guarantor or otherwise, are subject to the rights of the Vendor under the Security Documents. If an event of default should occur under the Security Documents, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Security Documents.

§ 5. *Identification Marks.* § 5 of the Model Lease Provisions is herein incorporated as § 5 hereof, except that nothing contained in such § 5 shall bar the Lessee from permitting the Units to be marked for convenience of

identification of the leasehold interest of any authorized lessee or sublessee.

§ 6. *Taxes.* § 6 of the Model Lease Provisions is herein incorporated as § 6 hereof except that the Lessee's obligation to pay taxes under said Section 6 shall not be increased by reason of an instruction by the Lessor to make payments in any jurisdiction other than Illinois or the State of the principal place of business of the Lessor or the Vendor.

§ 7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor the rental payment due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, irreparable damage or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase

Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	104.4744%	22	66.9177%
2	103.6689	23	64.6940
3	104.2305	24	62.4141
4	104.4956	25	60.0790
5	104.5341	26	57.6944
6	104.3068	27	55.2549
7	99.2292	28	52.7655
8	98.5357	29	50.2189
9	97.6485	30	47.6202
10	96.6094	31	44.9615
11	90.8232	32	42.2482
12	89.5508	33	39.4721
13	88.1747	34	36.6390
14	86.6865	35	33.7398
15	80.4663	36	30.7812
16	78.7804	37	27.7532
17	77.0067	38	24.6629
18	75.1421	39	21.4999
19	73.1981	40	18.2718
20	71.1744	41 and	
21	69.0801	thereafter	15.00000

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it and the benefits thereof shall be

payable as provided in the Security Documents and to furnish appropriate evidence of such insurance coverage upon request of the Lessor. Any damages receivable from others, any condemnation payments and any net insurance proceeds in respect of insurance carried by the Lessee received by the Lessor in respect of Units suffering a Casualty Occurrence (all hereinafter collectively referred to as Recoveries) shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 7. The excess of such damages received from others or condemnation payments, if any, after deduction of such payments received from the Lessee in respect of Casualty Occurrences, shall belong to the Lessor and the excess of such net insurance proceeds, after deduction of such payments received from the Lessee in respect of Casualty Occurrences, shall belong to the Lessee. If the Lessor shall receive any such Recoveries after the Lessee shall have made payments pursuant to this § 7 without deduction for such Recoveries, the Lessor shall pay such Recoveries to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such Recoveries (except any balance of net insurance proceeds which shall be paid to the Lessee) shall remain the property of the Lessor. In the event of the loss, theft, irreparable damage or complete destruction of such Unit, the Lessee shall also pay the Lessor the salvage value of such Unit which will be based upon its net scrap value, computed at the current quoted price per gross ton of number 1 railroad heavy melting steel scrap at Chicago, Illinois, on the date of the Casualty Occurrence, less an allowance of \$6.00 per gross ton for dismantling such Unit. Upon such payment of the salvage value of such Unit, the title to such Unit, subject to the rights of the Vendor under the Security Documents, shall pass to and vest in the Lessee.

All proceeds of insurance received by the Lessor in respect of insurance carried on any Unit or Units not suffer-

which shall have acquired the property of the Lessee as an entirety or substantially as an entirety.

Notwithstanding anything to the contrary contained in this § 12, Lessee agrees that none of the Units will be used in any manner or place so as to prohibit such Unit from constituting "Section 38 Property" within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended.

§ 13. *Purchase and Renewal Option.* Except as hereafter expressly provided in this § 13, and provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term (or, in the case of (b), the renewal term) of this Lease elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for a five-year period commencing on the scheduled expiration of the original term of this Lease, at a rental payable in 10 semiannual payments, each such payment in an amount equal to 35% of the rental rate payable during the initial term as provided in § 3 hereof; such semiannual payments to be made on the business day next preceding March 1, and September 1, in each year of the applicable extended term or (b) to purchase all, but not fewer than all, of such Units then covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the loca-

tion of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, the majority of a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne ratably by the Lessor and the Lessee.

Notwithstanding the foregoing, if upon the expiration of the original term of this Lease the "Fair Market Value" of the Units is less than 12% of the original Purchase Price (as defined in the Security Documents) of such Units, Lessor and Lessee agree that such deficiency shall be deemed to be caused directly by excess use of the Units by Lessee beyond that permitted by the terms of § 12 hereof, and Lessee shall, unless it elects to extend the term of this Lease for an additional period of five years pursuant to this § 13, compensate Lessor for such excess use in accordance with the provisions of this § 13. If Lessee shall exercise its purchase option under this § 13 at the end of the original term of this Lease, and the purchase price determined as aforesaid is less than 12% of the original Purchase Price, then Lessee shall pay to Lessor in cash, on the date when such purchase price is payable, an amount

equal to the difference between such purchase price and 12% of the original Purchase Price.

If Lessee elects to extend the term of this Lease for an additional period of five years pursuant to this § 13, and if upon the expiration of said renewal term the Fair Market Value of the Units shall be less than 7.785% of the original Purchase Price of such Units, Lessor and Lessee each agree that such deficiency shall be deemed to be caused directly by excess use of the Units by Lessee beyond that permitted by the terms of § 12 hereof, and Lessee shall compensate Lessor for such excessive use in accordance with the provisions of this § 13. If Lessee shall exercise its purchase option under this § 13 at the end of such renewal term and the purchase price determined as herein provided is less than 7.785% of the original Purchase Price, then Lessee shall pay to Lessor in cash, on the date when such purchase price is payable, an amount equal to the difference between such purchase price and 7.785% of the original Purchase Price and such payment shall constitute additional rental hereunder.

Upon payment of the purchase price and the additional sum (if any) described above, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

If Lessee shall not exercise such purchase option and returns the Units to Lessor at the end of the initial term

of this Lease and Lessor sells the Units to a third party for a sale price which is less than 12% of the original Purchase Price, there shall be deemed to have been excess use as aforesaid and Lessee shall pay to Lessor the difference between the sale price and 12% of the original Purchase Price of the Units.

If Lessee shall not exercise such purchase option and returns the Units to Lessor at the end of the renewal term of this Lease and Lessor sells the Units to a third party for a sale price which is less than 7.785% of the original Purchase Price, there shall be deemed to have been excess use as aforesaid and Lessee shall pay to Lessor the difference between the sale price and 7.785% of the original Purchase Price of the Units.

In the event Lessor is willing to sell such Units to third parties at a sale price less than the percentages set forth in the preceding two paragraphs, Lessor shall exhibit to Lessee a true copy of the proposed sale agreement and Lessee shall have a right of first refusal exercisable by written notice, delivered within 15 days, to purchase such Units at the applicable percentage set forth in the preceding two paragraphs of the original Purchase Price of such Units.

§ 14. *Return of Units upon Expiration of Term.* Upon the expiration of the term of this Lease with respect to any Unit of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit of Equipment to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or in the absence of such designation, on such storage tracks of the Lessee or of another party, as the Lessee may select, and permit or arrange for the Lessor to store such Unit on such tracks for a period not exceeding 180 days and transport the same at any time within such 180 day period to any reasonable place on the lines of any rail-

road within the United States at an expense not greater than the cost to return to Chicago for shipment, all as directed by the Lessor upon not less than 30 days' written notice to Lessee. All movement and storage of each such Unit is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit or arrange for the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store, and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 7 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

§ 15. *Opinion of Counsel.* § 15 of the Model Lease Provisions is herein incorporated as § 15 hereof. In addition, the Lessor will deliver to the Lessee an opinion of counsel for the Lessor stating that the Security Documents and this Lease have been duly authorized, executed and delivered by the Lessor and are legal and valid instruments, binding upon the Lessor and enforceable against the Lessor in accordance with their terms.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Security Documents and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit and recording required of the Lessor under the Security Documents and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documents or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor, except that the Lessor and the Lessee shall not be required to take any such action referred to in Article 19 of the Security Documents (other than filing and recording under Section 20c of the Interstate Commerce Act) if (1) it deems such action unduly

burdensome and (2) after giving effect to the failure to take such action, all action required by law has been taken so as to protect the security title of the Vendor to units of Equipment having a Purchase Price of not less than 90% of the aggregate Purchase Price of all of the then existing Units. This Lease and the Security Documents shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit and deposited in the office of the Registrar General of Canada and the Lessor will, at the expense of the Lessor, cause the required notice of such deposit thereafter to be published in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada (1970-RSC). Any sublease by the Lessor will, prior to delivery and acceptance of any Unit pursuant to said sublease, be filed and recorded with the Interstate Commerce Commission and deposited with the office of the Registrar General of Canada and the Lessee will cause the required notice of such deposit thereafter to be published as aforesaid.

The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

§ 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including (without limitation) an allowance for the Investment Credit and the ADR Deduction (each as defined in § 10 of this Lease), with respect to the Units. The Lessor agrees that it will claim the Investment Credit and ADR Deduction with respect to the Units to the extent permissible under the Code.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or

file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the full benefit of the Investment Credit and the ADR Deduction with respect to the Units.

The Lessee represents and warrants that (i) none of the Units constitutes property the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor and (iii) at all times during the term of this Lease, each Unit will constitute "Section 38 property" within the meaning of Section 48(a) of the Code.

If (other than for the reasons set forth below) the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, all or any portion of the Investment Credit or ADR Deduction with respect to any Unit, the rental rate applicable to such Unit set forth in § 3 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Investment Credit or ADR Deduction has not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's

which shall have acquired the property of the Lessee as an entirety or substantially as an entirety.

Notwithstanding anything to the contrary contained in this § 12, Lessee agrees that none of the Units will be used in any manner or place so as to prohibit such Unit from constituting "Section 38 Property" within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended.

§ 13. *Purchase and Renewal Option.* Except as hereafter expressly provided in this § 13, and provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term (or, in the case of (b), the renewal term) of this Lease elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for a five-year period commencing on the scheduled expiration of the original term of this Lease, at a rental payable in 10 semiannual payments, each such payment in an amount equal to 35% of the rental rate payable during the initial term as provided in § 3 hereof; such semiannual payments to be made on the business day next preceding March 1, and September 1, in each year of the applicable extended term or (b) to purchase all, but not fewer than all, of such Units then covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the loca-

tion of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, the majority of a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne ratably by the Lessor and the Lessee.

Notwithstanding the foregoing, if upon the expiration of the original term of this Lease the "Fair Market Value" of the Units is less than 12% of the original Purchase Price (as defined in the Security Documents) of such Units, Lessor and Lessee agree that such deficiency shall be deemed to be caused directly by excess use of the Units by Lessee beyond that permitted by the terms of § 12 hereof, and Lessee shall, unless it elects to extend the term of this Lease for an additional period of five years pursuant to this § 13, compensate Lessor for such excess use in accordance with the provisions of this § 13. If Lessee shall exercise its purchase option under this § 13 at the end of the original term of this Lease, and the purchase price determined as aforesaid is less than 12% of the original Purchase Price, then Lessee shall pay to Lessor in cash, on the date when such purchase price is payable, an amount

equal to the difference between such purchase price and 12% of the original Purchase Price.

If Lessee elects to extend the term of this Lease for an additional period of five years pursuant to this § 13, and if upon the expiration of said renewal term the Fair Market Value of the Units shall be less than 7.785% of the original Purchase Price of such Units, Lessor and Lessee each agree that such deficiency shall be deemed to be caused directly by excess use of the Units by Lessee beyond that permitted by the terms of § 12 hereof, and Lessee shall compensate Lessor for such excessive use in accordance with the provisions of this § 13. If Lessee shall exercise its purchase option under this § 13 at the end of such renewal term and the purchase price determined as herein provided is less than 7.785% of the original Purchase Price, then Lessee shall pay to Lessor in cash, on the date when such purchase price is payable, an amount equal to the difference between such purchase price and 7.785% of the original Purchase Price and such payment shall constitute additional rental hereunder.

Upon payment of the purchase price and the additional sum (if any) described above, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

If Lessee shall not exercise such purchase option and returns the Units to Lessor at the end of the initial term

of this Lease and Lessor sells the Units to a third party for a sale price which is less than 12% of the original Purchase Price, there shall be deemed to have been excess use as aforesaid and Lessee shall pay to Lessor the difference between the sale price and 12% of the original Purchase Price of the Units.

If Lessee shall not exercise such purchase option and returns the Units to Lessor at the end of the renewal term of this Lease and Lessor sells the Units to a third party for a sale price which is less than 7.785% of the original Purchase Price, there shall be deemed to have been excess use as aforesaid and Lessee shall pay to Lessor the difference between the sale price and 7.785% of the original Purchase Price of the Units.

In the event Lessor is willing to sell such Units to third parties at a sale price less than the percentages set forth in the preceding two paragraphs, Lessor shall exhibit to Lessee a true copy of the proposed sale agreement and Lessee shall have a right of first refusal exercisable by written notice, delivered within 15 days, to purchase such Units at the applicable percentage set forth in the preceding two paragraphs of the original Purchase Price of such Units.

§ 14. *Return of Units upon Expiration of Term.* Upon the expiration of the term of this Lease with respect to any Unit of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit of Equipment to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or in the absence of such designation, on such storage tracks of the Lessee or of another party, as the Lessee may select, and permit or arrange for the Lessor to store such Unit on such tracks for a period not exceeding 180 days and transport the same at any time within such 180 day period to any reasonable place on the lines of any rail-

road within the United States at an expense not greater than the cost to return to Chicago for shipment, all as directed by the Lessor upon not less than 30 days' written notice to Lessee. All movement and storage of each such Unit is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit or arrange for the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store, and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 7 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

§ 15. *Opinion of Counsel.* § 15 of the Model Lease Provisions is herein incorporated as § 15 hereof. In addition, the Lessor will deliver to the Lessee an opinion of counsel for the Lessor stating that the Security Documents and this Lease have been duly authorized, executed and delivered by the Lessor and are legal and valid instruments, binding upon the Lessor and enforceable against the Lessor in accordance with their terms.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Security Documents and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit and recording required of the Lessor under the Security Documents and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documents or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor, except that the Lessor and the Lessee shall not be required to take any such action referred to in Article 19 of the Security Documents (other than filing and recording under Section 20c of the Interstate Commerce Act) if (1) it deems such action unduly

burdensome and (2) after giving effect to the failure to take such action, all action required by law has been taken so as to protect the security title of the Vendor to units of Equipment having a Purchase Price of not less than 90% of the aggregate Purchase Price of all of the then existing Units. This Lease and the Security Documents shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit and deposited in the office of the Registrar General of Canada and the Lessor will, at the expense of the Lessor, cause the required notice of such deposit thereafter to be published in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada (1970-RSC). Any sublease by the Lessor will, prior to delivery and acceptance of any Unit pursuant to said sublease, be filed and recorded with the Interstate Commerce Commission and deposited with the office of the Registrar General of Canada and the Lessee will cause the required notice of such deposit thereafter to be published as aforesaid.

The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

§ 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including (without limitation) an allowance for the Investment Credit and the ADR Deduction (each as defined in § 10 of this Lease), with respect to the Units. The Lessor agrees that it will claim the Investment Credit and ADR Deduction with respect to the Units to the extent permissible under the Code.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or

file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the full benefit of the Investment Credit and the ADR Deduction with respect to the Units.

The Lessee represents and warrants that (i) none of the Units constitutes property the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor and (iii) at all times during the term of this Lease, each Unit will constitute "Section 38 property" within the meaning of Section 48(a) of the Code.

If (other than for the reasons set forth below) the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, all or any portion of the Investment Credit or ADR Deduction with respect to any Unit, the rental rate applicable to such Unit set forth in § 3 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Investment Credit or ADR Deduction has not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's

net return over the term of the Lease in respect of such Unit under this Lease to equal the net return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Investment Credit or ADR Deduction which was not claimed or was disallowed and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss of all or any portion of the Investment Credit or ADR Deduction; *provided, however*, that such rental rate shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have disallowed with respect to the Lessor, all or any portion of such Investment Credit or ADR Deduction with respect to such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a transfer by the Lessor of legal title or equitable interest therein to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease (except the subjection of such Unit to the Conditional Sale Agreement or the payment of rentals and other amounts hereunder to the Vendor as specified in § 3 hereof), unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment of the Security Documents without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim such Investment Credit or ADR Deduction as applicable, in its income tax return for the appropriate year or the fail-

ure of the Lessor to follow proper procedure in claiming such Investment Credit or ADR Deduction as applicable;

(v) the failure of the Lessor to have sufficient liability for tax against which to credit such Investment Credit or sufficient income to benefit from the ADR Deduction as applicable;

(vi) the failure of the Lessor to take timely action in contesting a claim made by the Internal Revenue Service with respect to the disallowance of such Investment Credit or ADR Deduction, if the failure to take such action in a timely manner shall have precluded the right of the Lessee to contest such claim, or a failure to take action to contest any such claim after a timely request to conduct such contest has been given by the Lessee to the Lessor (provided that the Lessee shall upon demand of the Lessor pay to the Lessor the expenses of any such contest as a condition of prosecuting the same); or the release, waiver, compromise or settlement of any action or proceeding taken in accordance with this clause (vi) by the Lessor without the prior written consent of the Lessee; or

(vii) any other fault of the Lessor which directly causes the loss of any of the aforesaid tax benefits; *provided, however*, that the execution and delivery of this Lease and the other documents herein referred to and the carrying out of the transactions contemplated herein and therein in accordance with the terms of this Lease and such other documents shall not be deemed to have caused the loss of such tax benefit under this clause (vii).

In the event a claim shall be made by the Internal Revenue Service with respect to the disallowance of the

Lessor's Investment Credit or ADR Deduction in respect of any Unit, the Lessor agrees to take such action in connection with contesting such claim as the Lessee shall reasonably request from time to time, *provided* that: (i) within 30 days after notice by the Lessor to the Lessee of such claim, the Lessee shall make request that such claim be contested; (ii) the Lessor, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such claim and may, at its sole option, either pay (in which event the additional rental provided for in this § 17 will become due and payable) the tax claimed and sue for a refund in the appropriate United States District Court and/or the United States Court of Claims, as the Lessor shall elect, or contest such claim in the Tax Court of the United States, considering, however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to proceed; (iii) prior to taking such action, the Lessee shall have furnished the Lessor with an opinion of independent tax counsel satisfactory to the Lessor to the effect that a meritorious defense exists to such claim; and (iv) the Lessee shall have indemnified the Lessor in a manner satisfactory to it for any liability or loss which the Lessor may incur as the result of contesting such claim, and shall have agreed to pay the Lessor on demand all costs and expenses which the Lessor may incur in connection with contesting such claim, including, without limitation (A) reasonable attorneys' and accountants' fees and disbursements and (B) the amount of any interest or penalty which may ultimately be payable to the United States Government as the result of contesting such claim, and the Lessee shall have furnished reasonable se-

curity for such indemnification as may be requested. In the case of any such claim by the Internal Revenue Service referred to above, the Lessor agrees promptly to notify the Lessee in writing of such claim and agrees not to make payment of the tax claimed for at least 30 days after the giving of such notice and agrees to give to the Lessee any relevant information relating to such claim which may be particularly within the knowledge of the Lessor, and shall otherwise cooperate with the Lessee in good faith in order to effectively contest any such claim. The Lessor will not agree to the release, compromise or settlement of any action or proceeding taken in accordance with this § 17 by the Lessor without the prior written consent of the Lessee.

If the Lessor's right to claim all or any part of the full Investment Credit or ADR Deduction with respect to a Unit, which was not claimed or was disallowed, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, or if the Lessor shall release, waive, compromise or settle any claim without the written consent of the Lessee, then, on the next succeeding rental payment date thereafter, or after such judgment or decree shall have become final, as the case may be, the rental rate in respect of such Unit set forth in § 3 of this Lease shall again become applicable to such Unit and the Lessor shall forthwith upon demand of the Lessee reimburse Lessee in an amount equal to the excess, if any, of (i) the sum of (A) the difference between the increased rental paid by the Lessee with respect to such Unit pursuant to the fourth paragraph of this § 17 and the rental rate applicable to such Unit pursuant to § 3 of this Lease and (B) any interest paid by the Lessee to the Lessor pursuant to the third paragraph of this § 17 over (ii) the difference between (A) an amount equal to interest at the rate of

8½% per annum on the amount of any federal income tax paid by the Lessor on account of the disallowance or inability to claim the Investment Credit or ADR Deduction on such Unit and (B) the amount of any interest to which the Lessor would be entitled in connection with the refund of any tax paid on account of such disallowance or inability to claim; *provided, however*, that if the amount calculated in accordance with clause (ii) exceeds the amount calculated in accordance with clause (i), the Lessee shall pay such excess to the Lessor promptly on demand.

The Lessee's and the Lessor's agreement to pay any sums which may become payable pursuant to this § 17 shall survive the expiration or other termination of this Lease.

§ 18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 9½% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at P. O. Box 149, Salt Lake City, Utah 84110, attention F. W. Champ, President; and

(b) if to the Lessee, at 77 South Wacker Drive, Chicago, Illinois 60606, attention Vice President—Finance;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

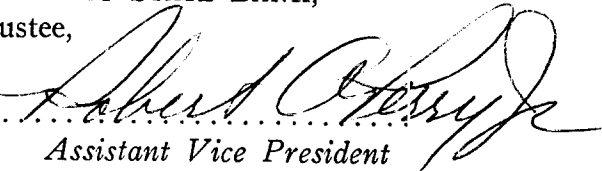
This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 21. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of April 1, 1972, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

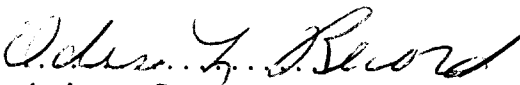
IN WITNESS WHEREOF, the parties hereto have executed
or caused this instrument to be executed as of the date first
above written.

FIRST SECURITY STATE BANK,
as Trustee,

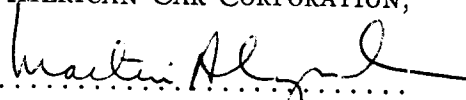
by 
Assistant Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

NORTH AMERICAN CAR CORPORATION,

by 
Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

STATE OF UTAH }
COUNTY OF SALT LAKE } ss.:

On this 9th day of May, 1972, before me personally appeared ROBERT A. PERRY, JR., to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of FIRST SECURITY STATE BANK, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Richard C. Peterson
Notary Public

[NOTARIAL SEAL]

My Commission Expires

April 17, 1974

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 9th day of May, 1972, before me personally appeared Martin A. Lynch, to me personally known, who, being by me duly sworn, says that he is a Vice President of NORTH AMERICAN CAR CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Richard C. Peterson
Notary Public

[NOTARIAL SEAL]

My Commission Expires

April 17, 1974

SCHEDULE A

Type	Builder's Specifications	Builder's Plant	Quantity	Lessee's Identification Numbers (Both Inclusive)	Unit Base Price	Total Base Price	Estimated Time and Place of Delivery
100 ton PS-2 center dump covered hopper cars, 4,740 cubic feet capacity	9597	Butler, Pennsylvania	200	50500-50699	\$18,120	\$ 3,624,000	April-May 1972 at Youngstown, Ohio
100 ton PS-2 triple covered hopper cars, 4,785 cubic feet capacity, without center sill, with gravity gates	9593	Butler, Pennsylvania	400	890101-890500	19,300	7,720,000	June-July 1972 at Youngstown, Ohio
100 ton PS-2 triple covered hopper cars, 4,785 cubic feet capacity, without center sill, with gravity pneumatic gates	9593-A	Butler, Pennsylvania	100	890001-890100	20,025	2,002,500	July 1972 at Youngstown, Ohio